



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://uspto.gov)

Paper No. 6

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC  
767 THIRD AVENUE  
25TH FLOOR  
NEW YORK NY 10017-2023

**COPY MAILED**  
**SEP 10 2002**  
**OFFICE OF PETITIONS**

In re Application of  
Takaki, et al.  
Application No. 10/091,234  
Filed: March 4, 2002  
Attorney Docket No. 0211/LH

DECISION GRANTING  
PETITION

This is a decision on the reconsideration petition under 37 CFR 1.10(d), filed June 24, 2002, requesting that the above-identified application be accorded a filing date of March 4, 2002, rather than the presently accorded filing date of March 5, 2002.

The petition under 37 CFR 1.10(d) is **GRANTED**.

Petitioners request the earlier filing date on the basis that the application was deposited in Express Mail service on March 4, 2002, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of a United States Postal Service Pickup Service Statement for Express Mail, Priority Mail, or Parcel Post showing that a package bearing Express Mail label No. EV044465440US was picked up on March 4, 2002 at 5:45 pm. The same Express Mail label number is found on the original application papers.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of

the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed June 24, 2002, is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is granted.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to **March 4, 2002**.

Thereafter, the application will be forwarded to Technology Center Art Unit 2863 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis  
Senior Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy